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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW ENOCK WALKLEY,

Defendant and Appellant.

C085730

(Super. Ct. Nos.
16F3818, 16F7833, 17F1388)

While on probation for two domestic violence convictions, defendant Matthew Enock Walkley committed another act of domestic violence. On appeal, he contends the trial court erred in admitting evidence of prior acts of domestic violence against the victim. (Evid. Code, § 1109.)¹ He further contends the evidence was insufficient to support the true finding that he inflicted great bodily injury on the victim. We affirm the judgment.

¹ Undesignated statutory references are to the Evidence Code.

FACTUAL AND PROCEDURAL BACKGROUND

As of March 2017, the victim and defendant had been in a romantic relationship for 12 years and were living together. The victim had previously suffered a brain aneurysm. In 2014, she had a seizure and was unable to work. After the seizure, the victim relied on defendant to help with the bills. Defendant also took care of the victim physically.

Evidence Regarding Prior Domestic Violence (June and Dec. 2016)

Prior to trial, the prosecution moved to admit evidence of defendant's two prior domestic violence convictions. (§ 1109.) In case Nos. 16F3818 and 16F7833, defendant pleaded no contest to one count per case of corporal injury to a spouse or cohabitant (Pen. Code, § 273.5, subd. (a)), for a total of two convictions, with respect to separate incidents in June and December 2016. Defendant objected, arguing the evidence was more prejudicial than probative. (§ 352.) The trial court held the evidence was admissible under section 1109, reasoning the acts were "recent in time, similar to the current offenses, and . . . highly probative." The court noted it had "conducted the balancing test also under [section 352]."

During trial, the victim testified that defendant became violent with her starting in June 2016. On June 16, 2016, she and defendant were arguing. She had been outside trying to put away the trash bins and defendant said she was trying to make him look bad in front of the neighbors. During the argument, defendant threw her on the couch and tried to smother her with a pillow. The victim was unable to breathe but did not lose consciousness. She was eventually able to get away from defendant. The victim and a neighbor each called the police, and defendant was arrested. The victim continued her romantic relationship with defendant after the incident. She still cared for him and relied on him for medical assistance. Their relationship stayed the same after the incident, although defendant never apologized. Defendant testified at trial that he got "irritated"

with the victim that day but did not use any physical violence against her. He also denied smothering her.

The victim also testified that, in December 2016, defendant was mad and yelling at her. They had been arguing because the victim was proud of her son-in-law, but he did not get along with defendant. Defendant hit her in the face and punched her, causing her to fall off the bed. The victim suffered a broken dental implant, a cut lip, and she had blood running down her face. Some neighbors began knocking on the door, and defendant opened the door and got into a fight with them. The police were called. Defendant never apologized. Although the victim broke up with defendant when he was incarcerated for the incident, the couple resumed their relationship a few weeks after he was released and things returned to normal. Although the victim did not find it difficult to take care of herself while defendant was gone and her daughter helped her with the bills, she loved him and felt “safer” when he was there.

Defendant testified at trial that he had two convictions for domestic violence due to the June and December 2016 incidents. Defendant denied punching or hitting the victim, choking her, knocking out her tooth, smothering her with a pillow, or causing bruising on her arm.

During trial, the jury was instructed to consider the evidence of the uncharged domestic violence only if the prosecution had proved that defendant committed the acts “by a preponderance of the evidence.” If the jury decided that defendant committed the uncharged domestic violence, the court instructed, “you may but are not required to conclude from that evidence that . . . defendant was disposed or inclined to commit domestic violence, and based on that decision also conclude that . . . defendant was likely to commit [the charged crimes].”

The Incident at Issue on Appeal (Mar. 8, 2017)

The victim's testimony

The victim testified at trial that her adult daughter, son-in-law, and grandchildren planned a three-day visit with her, starting on March 6, 2017. The victim's daughter had not allowed defendant to be around the grandchildren since the summer of 2016, due to the domestic violence incidents between the victim and defendant. Defendant had been upset when the victim told him he could no longer be around the grandchildren, and the two argued about it. The first day of the visit, defendant remained at the apartment with the victim, so she told her daughter to stay elsewhere. Defendant told the victim he would leave the apartment the next morning, so she could visit with her daughter, and he did so. Defendant returned that evening, after the victim was done visiting with her daughter. He seemed "angry" and complained about not being able to visit with his favorite granddaughter.

The next day (March 8, 2017), the victim's daughter was supposed to visit before returning home. Defendant had previously agreed to leave but refused to do so that morning. Defendant and the victim began arguing about her son-in-law and not being able to visit with the grandchildren. The two drank some alcohol, including a glass of vodka each and a shared a 20-ounce beer. The victim testified she was not drunk or "buzzed."

Since defendant had not left, the victim told her daughter not to come over, and she began arguing with defendant. Defendant "came at" the victim, so she grabbed her phone from the bed and suggested she would call a friend. As the victim was sitting on the bed, defendant knocked the phone out of her hand. Over the victim's protests to stop, he pushed her down, got on top of her, and began choking her with two hands so hard she could not breathe. The last thing the victim remembered was defendant's using his arm to choke her and saying, "Go to sleep." The victim eventually woke up and saw

defendant running around the apartment in a panic, saying the daughter was coming over. He left the apartment, and the victim called her daughter and said defendant had “choked [her] unconscious.” The daughter responded defendant had said she was just sleeping. When the daughter arrived, she asked the victim what happened to her neck. The victim said, “I told you he choked me.” The daughter stayed with the victim for an hour and then returned home.

The victim testified she decided not to call the police about the incident because she feared defendant would get into “big trouble.” Later that evening, the police arrived based on a call from the daughter. The victim was scared but told them the truth.

The victim testified that, as a result of the incident, her throat hurt and she had bruises on her neck, chest, and arms. She also had bumps on her head and abdominal pain. The victim did not think she needed medical assistance immediately after the incident. Photos of the victim’s injuries were shown to the jury. The victim was certain she did not have a seizure that day.

The daughter’s testimony

At trial, the daughter testified she had known defendant for 10 years. The relationship between the victim and defendant was “abusive,” with hitting and drinking. After defendant was first incarcerated for hitting the victim, the daughter and her husband decided defendant could not be around the grandchildren.

While speaking with the victim on the phone during her visit in March 2017, the daughter repeatedly overheard defendant arguing with the victim. Defendant was upset that he would not be allowed to see the grandchildren and did not want to leave the apartment.

At 9:00 a.m. on March 8, 2017, the victim called the daughter and advised against coming over because she and defendant were arguing. At 2:00 p.m., the daughter called the victim’s cell phone to ask if they had left a cell phone at the apartment. Defendant

answered and said the victim had been drinking and was asleep and unresponsive. Defendant found the phone and said he would leave it on the table for her. The daughter arrived at the apartment and found the phone. The victim was in the bedroom and appeared upset and “really confused.” It seemed as though she had just woken up from being unconscious. She also looked “beaten up.” There was “bruising all over her neck and face and a lump on her head,” including “handprints” on her neck and chest. The daughter also saw bruising on the victim’s arm and cheek. The daughter had not noticed these injuries when she was visiting with the victim the day before. The victim told the daughter that defendant had choked her so hard she became unconscious three times. The victim was afraid she was “going to die.” The daughter testified there were no signs of a medical issue, other than the visible injuries, and the victim did not appear to have been drinking.

The daughter testified she stayed with the victim for 25 minutes and then left to return home. She did not want the grandchildren to see the victim and her injuries. An hour after leaving to return home, the daughter called police because she was concerned for the victim’s safety and feared the victim would not report the incident, just as the victim had failed to do after prior violent altercations with defendant. The daughter called the victim to let her know about the police, and the victim was upset and said she would “rather take the abuse than be alone.”

The responding officer’s testimony

Redding Police Department Officer Wesley Townsley testified at trial that he was the responding officer and arrived two hours after the incident. The victim seemed “very downcast” and appeared as though she had been crying. She had bruising on her neck, chest, head, and arms. She was initially “very hesitant” to provide a statement and began to “sob” when she described the incident. Townsley noted her voice was “very low” and raspy, which he found to be consistent with being strangled. The victim’s voice sounded

“very different” during her trial testimony, namely “much clearer and higher.” The victim did not appear to be suffering from any medical condition or intoxication.

Officer Townsley testified that the photos shown to the jury did not “do justice to the [victim’s] injuries.” He noticed significantly more redness on her arms and neck, swelling and bruising on her neck, and a lump on her forehead. He specifically saw fresh “fingerprint bruises” on the victim’s wrist area and right biceps. He also noted raised, bright reddish and purple finger marks on her neck. Townsley testified he realized it was “probably a significant altercation.”

That evening, Officer Townsley spoke with defendant while he was at his father’s apartment. Townsley saw fingernail scratches on defendant’s chest and arm. He did not observe any burn marks or stab wounds.

Defendant’s testimony

Defendant testified at trial that he stayed away when the daughter and grandchildren were visiting with the victim. He and the victim got along well the evening of March 7, 2017, and he spent the night. He woke up the next morning at 9:00 a.m., and the victim woke up at 10:00 a.m. Before the victim woke up, her daughter called and asked to speak with the victim. Defendant told her the victim was asleep, but the victim woke up and spoke with her daughter. Meanwhile, defendant tidied up.

After the phone call, he and the victim each poured themselves a glass of vodka. The two began arguing when the victim drank all her vodka but told defendant to stop drinking. As defendant sat naked on the bed, he realized the victim had used a cigarette lighter to light his buttocks hairs on fire. The victim then burned defendant on his arm, which he was holding behind his back. Defendant said he was leaving and reached down for his clothes. The victim lunged at him from behind and pulled him back on the bed. Defendant pulled her arm away. As he tried to run to the living room, the victim grabbed his face and scratched him. The victim then chased defendant to the living room and

“came at [him]” with an old kitchen knife. The victim jabbed him in the belly, resulting in a scratch. Defendant begged for his clothes, but the victim refused and opened the door for him to leave. The victim tried to slash defendant with the knife and used her other hand to hit him. She also bit him. The victim’s dental crown came loose when defendant yanked his hand out of her mouth. Defendant eventually got the victim in a bear hug and wrestled the knife away from her. Defendant pulled her on the bed, jumped off, grabbed his clothes, and went to the living room to get dressed. Defendant left for his father’s home after collecting some items and finishing his drink.

Defendant testified the victim had seizures in March 2015 and April 2016. She had also suffered from hallucinations in the previous 12 months. When he drove her around, she would sometimes see imaginary people in the road and grab the steering wheel to avoid hitting them. In June 2016, the victim went missing in the middle of the night, and defendant found her in a ditch covered with thorn pricks and scratches. Defendant briefly stopped talking to the victim in June 2016 because she “was acting just really strange and aggressive toward me.” In September 2016, she disappeared for three days, and the daughter called for help. Defendant finally found her and took her to the hospital. In addition, the victim suffered from seasonal allergies and had a “raspy voice” as a result. She also bruised easily and had a persistent discolored, raised spot on her forehead prior to the incident.

Jury Verdict, Sentencing, and Appeal

In August 2017, the jury found defendant guilty of corporal injury of a cohabitant and found true defendant personally inflicted great bodily injury on the victim. (Pen. Code, §§ 273.5, subd. (a), 12022.7, subd. (e).)

In September 2017, the trial court revoked and terminated probation in case Nos. 16F3818 and 16F7833. Defendant was sentenced to state prison for an aggregate term of 12 years, as follows: (1) in case No. 17F1388, five years (Pen. Code, § 273.5,

subd. (a)) plus five years for the great bodily injury enhancement (*id.*, § 12022.7, subd. (e)), (2) in case No. 16F3818, one year (one-third the midterm) (*id.*, § 273.5, subd. (a)), (3) in case No. 16F7833, one year (one-third the midterm) (*id.*, § 273.5, subd. (a)).

Defendant timely appealed.

DISCUSSION

1.0 Prior Uncharged Acts

Defendant contends the trial court erred in admitting evidence of defendant's prior acts of domestic violence, including the June and December 2016 incidents. (§§ 1109, 352.) According to defendant, the jury simply should have been told he had two prior convictions for domestic violence because the additional evidence was more prejudicial than probative. Defendant argues the jury would have been inclined to punish him for the other acts, especially since the daughter testified that she would not allow the grandchildren to be around him due to his abusive relationship with the victim. We disagree.

Under section 1101, subdivision (a), unless an exception applies, evidence of a defendant's character, including evidence of specific instances of past conduct, is inadmissible when offered to prove the defendant's conduct on a specified occasion. Section 1109, subdivision (a)(1) is one such exception: "[I]n a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352."

Under section 352, "[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." We review relevancy and

section 352 rulings for abuse of discretion. (*People v. Branch* (2001) 91 Cal.App.4th 274, 282; see *People v. Brown* (2000) 77 Cal.App.4th 1324, 1337.)

“ ‘ “ ‘The principal factor affecting the probative value of an uncharged act is its similarity to the charged offense.’ ” ’ [Citations.] ‘Thus, the statute reflects the legislative judgment that in domestic violence cases, as in sex crimes, similar prior offenses are “uniquely probative” of guilt in a later accusation. [Citation.] Indeed, proponents of the bill that became section 1109 argued for admissibility of such evidence because of the “typically repetitive nature” of domestic violence.’ ” (*People v. Kerley* (2018) 23 Cal.App.5th 513, 536.)

“Other factors affecting the probative value include the extent to which the source of the evidence is independent of the charged offense, and the amount of time between uncharged acts and the charged offense. The factors affecting the prejudicial effect of uncharged acts include whether the uncharged acts resulted in criminal convictions and whether the evidence of uncharged acts is stronger or more inflammatory than the evidence of the charged offenses.” (*People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1211.)

“ ‘ “ ‘[T]he prejudice which exclusion of evidence under [section 352] is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. “[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant’s case. The stronger the evidence, the more it is ‘prejudicial.’ The ‘prejudice’ referred to in [section 352] applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.” ’ ” ’ ” (*People v. Fruits* (2016) 247 Cal.App.4th 188, 205.)

Despite defendant’s contentions, the evidence of his prior acts of domestic violence was highly probative to the issue of whether he committed domestic violence in this case. The acts were recent, and one involved defendant similarly trying to suffocate

the victim. In addition, the cumulative nature of defendant's repetitive domestic violence was particularly probative. (See *People v. Cabrera* (2007) 152 Cal.App.4th 695, 706 [the probative value of two prior acts of domestic violence against two different women was "principally in its cumulative nature," and "far outweighed any potential prejudice"].) There is no indication that the prior acts were more inflammatory than the charged offense, which weighs in favor of admission. That defendant was convicted of the crimes also weighs in favor of admission. Presentation of the evidence did not require an undue consumption of time, and the jury was not likely misled or confused, especially since the jury was instructed that it was to consider the evidence only if the prosecution had proved by a preponderance of the evidence that defendant committed the uncharged acts. If the jury decided that defendant committed the uncharged domestic violence, it could but was not required to conclude that defendant was "disposed or inclined to commit domestic violence," and also "likely to commit [the charged crimes]." On this record, we find no error.

2.0 Great Bodily Injury Enhancement

Defendant contends there was insufficient evidence to support the true finding on the great bodily injury enhancement. According to defendant, only the victim's testimony suggested she suffered a significant or substantial physical injury. Defendant points to the fact that the victim did not seek medical attention. In addition, no medical testimony established that the victim lost consciousness. Defendant argues the evidence showed the victim was not thinking clearly during the incident, given her preexisting medical conditions and alcohol intake that day. We disagree with defendant's view of the evidence.

In considering a claim of insufficient evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence such that a reasonable jury could find defendant guilty beyond a reasonable

doubt. (*People v. Elliot* (2005) 37 Cal.4th 453, 466.) We presume the existence of every fact supporting the judgment that the jury reasonably could deduce from the evidence, and a judgment will be reversed only if there is no substantial evidence to support the verdict under any hypothesis. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; see *People v. Jennings* (2010) 50 Cal.4th 616, 638-639.) We do not substitute our judgment for that of the jury, reweigh the evidence, or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

Great bodily injury is significant or substantial. (*People v. Escobar* (1992) 3 Cal.4th 740, 746.) Such an injury may be transitory and need not be permanent or protracted. (*Id.* at pp. 748-749.) “Abrasions, lacerations, and bruising can constitute great bodily injury.” (*People v. Jung* (1999) 71 Cal.App.4th 1036, 1042.) Similarly, a loss of consciousness that did not require medical attention was sufficient to establish “serious bodily injury” under Penal Code section 243 (*People v. Wade* (2012) 204 Cal.App.4th 1142, 1149), which courts have recognized as “ ‘essentially equivalent’ ” to great bodily injury (*People v. Burroughs* (1984) 35 Cal.3d 824, 831, overruled on another ground in *People v. Blakely* (2000) 23 Cal.4th 82, 89; but see *People v. Taylor* (2004) 118 Cal.App.4th 11, 26 [although the “usual assumption” is the phrases have the “same meaning,” the statutory definitions differ]).

Despite defendant’s contentions, there was substantial evidence that defendant choked the victim unconscious, including the victim’s testimony that defendant choked her so hard she could not breathe. As he was doing so, he told her to “Go to sleep,” and the next thing she remembered was waking up to defendant’s running around the apartment in a panic, indicating defendant had choked her unconscious. The victim testified she suffered a sore throat and bruises on her neck, chest, and arms, indicating the severity of the altercation. The victim’s testimony is corroborated by the daughter’s testimony that the victim told her soon after the incident that defendant had choked her

unconscious three times. The daughter also observed bruising and handprints on the victim's neck, along with bruising on her face and a lump on her head. Officer Townsley testified the victim had redness, swelling, bruising, and bright reddish purple finger marks on her neck, along with a lump on her forehead and bruises on her wrist and biceps. In addition, the victim's voice was "very low" and raspy, which he found to be consistent with being strangled. The jury was shown photos of the victim's injuries, which Townsley testified did not "do justice to the [victim's] injuries." Under these circumstances, substantial evidence supports the great bodily injury enhancement.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

BLEASE, Acting P. J.

DUARTE, J.